

P.R. No. 2731/06

Presented by Shri. Sanjay Singh

dated 27/05/06

Ch 10/06

(A)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: C.G.

SINGLE BENCH

W.P. NO. 2689 Of 2006

WRIT PETITION UNDER ARTICLE 227,
OF CONSTITUTION OF INDIA

Petitioner :
Plaintiff

Prashant Dave, aged about 40 years,
S/o Late Shri Durgashankar Dave,
R/o Pandri, Behind Post Office
Pandri, Raipur, Shop Sharda Chuak,
In Front of Police Chauki,
M.G.Road, Raipur(C.G.)

Vs

Respondent:
Defendant

Smt. Shakuntala Devi aged about 53 years,
Wd/o Late Shri Rawal Das Nagrani,
R/o Panchsheel Nagar, (Present address - Om Krishna, Jais corner
Raipur, Tahsil & District Raipur (C. G.) Sharda Chouk, Raipur)

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 2689 of 2006**

Prashant Dave

Vs.

Smt. Shakuntala Devi

Appearance:

Shri Ravish Chandra Agrawal, Senior Advocate with Shri Sanjay S. Agrawal, counsel for the petitioner/plaintiff.

Shri B.P. Sharma, counsel for the respondent/defendant.

ORDER
(14.12.2006)

SUNIL KUMAR SINHA, J.

(1) By way of this writ petition, filed under Article 227 of Constitution of India, the petitioner/plaintiff has challenged the legality, validity and propriety of the order dated 21.3.2006 (Annexure-P/9) passed by the District Judge, Raipur in Misc. Civil Appeal No. 1/2006, by which, the petitioner's appeal, filed against the order dated 6.2.2006 (Annexure-P/8) refusing temporary injunction by the trial Court, has been dismissed.

(2) The brief facts are that on 12.1.2006, the petitioner filed a suit for permanent injunction restraining the respondent/defendant from interfering with his possession of the disputed shop, claiming himself to be the tenant of the respondent. The plaintiff allegations are that this shop was taken on rent by the predecessors of the plaintiff since long back and presently the plaintiff is running a business in the said shop in the name and style of 'Swad Sangam'. In the month of December, 2005, the plaintiff was restrained by the defendant, especially one Shri Sunil Nagrani and Shri Kishore Nagrani, from opening the said shop and he found that the sign board of his shop was removed. The matter was reported to the Police on 20.12.2005. When no action was taken by the Police, the plaintiff had to file a proceeding u/s 145 of the Code of Criminal Procedure before the Sub-Divisional

Magistrate and ultimately on this application, an order of status quo was granted in his favour. Later on, on 10.1.2006, the shutters of the shop was broken by the defendant and the defendant tried to take over the possession of the plaintiff, which gave rise to a cause of action to file the instant suit for permanent injunction. Along-with the said civil suit, the plaintiff also filed an application for temporary injunction restraining the defendant from interfering with his possession during the pendency of the suit. The defendant filed a reply to the aforesaid application, *inter-alia* pleading that in fact, the plaintiff was not in possession of the suit premises on the date of institution of the suit and the defendant is holding the possession thereof since long back. She pleaded that the suit premises was purchased by her on 26.7.2002 and on a request being made by her from the plaintiff for vacating the premises, the plaintiff agreed to it in the month of November, 2005 with a condition that he would be paid a sum of Rs.2,50,000/- on account of furniture and fixtures of the said shop, then only he would hand over the possession of the said shop to the defendant. It is on this, the defendant paid Rs.2,50,000/- to the plaintiff in the month of November, 2005 and vacant possession of the shop was taken by her. Therefore, her specific pleading in regard to possession is that she is holding the possession of the said shop since the month of November, 2005.

(3) The trial Court, after hearing the parties, dismissed the application for grant of temporary injunction on the ground that the plaintiff could not establish a *prima facie* case in his favour as he could not file any document regarding his possession over the suit premises. The trial court also held that the other two questions like balance of convenience and irreparable injury also do not fall in favour of the plaintiff and the plaintiff was not entitled to a temporary injunction.

(4) In a Misc. Appeal filed under Order 43 Rule 1(r) of the Code of Civil Procedure, the appellate Court also took the similar view and dismissed the appeal of the petitioner holding that the petitioner was not in possession of the disputed shop on the date

of the institution of the suit, therefore, he was not entitled to a temporary injunction and the order passed by the trial Court refusing temporary injunction was just and proper. It is against this order, the petitioner/plaintiff has filed this petition.

(5) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(6) Shri Ravish Agrawal, Sr. Advocate, appearing on behalf of the petitioner, argued that in view of the law laid down by the Apex Court in the matter of **Dorab Cawasji Warden -Vs- Cooml Sorab Warden and others, (1990) 2 SCC 117**, and in light of the facts and circumstances prevailing in this case, an interlocutory mandatory injunction should be granted in favour of the petitioner. It has been held by the Apex Court in the said judgment that the relief of interlocutory mandatory injunctions are granted generally to preserve or restore the status-quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the complainant. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (i) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (ii) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (iii) The balance of convenience is in favour of the one seeking such relief.

However, in para 17 of the said judgment, the Apex Court further said that being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. The Apex Court further said that though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

(7) Shri Agrawal pointed out and it is also an admitted fact in this case that prior to the present civil suit, another civil suit for declaration and permanent injunction was filed by the defendant on 19.6.2003 praying that the plaintiff should be restrained from making any construction in the rented premises. He submits that in the said civil suit the tenancy between the parties was admitted. However, the said suit was dismissed for non-prosecution on 07.5.2005. His submission is that when tenancy was admitted in the year 2003, in absence of any evidence of termination of lease, it should be deemed to be the last non-contested status and that should be restored by granting temporary mandatory injunction to the plaintiff. He referred to section 111 of The Transfer of Property Act saying that there is no evidence of termination of lease between the parties admitted to be existing at one point of time. He strongly emphasized that as per the provisions of sub-clause(e)(f) of the said section, there is no prima facie evidence to prove the determination of the lease by express or implied surrender, therefore, there was a strong prima facie case in favour of the plaintiff, which the Courts below have lost sight of.

(8) On the other hand, Shri B.P.Sharma, learned counsel for the respondent submitted that such matters cannot be taken up for consideration under Article 227 of the Constitution of India. He relied on the decisions of the Apex Court rendered in the matter of Ouseph Mathai and others -Vs- M. Abdul Khadir, (2002) 1 SCC

319 and STATE through Special Cell, New Delhi -vs- Navjot Sandhu alias Afshan Guru and others (2003) 6 SCC 641 and Surya Dev Rai -Vs- Ram Chander Rai (2003) 6 SCC 675.

(9) In *Ouseph Mathai's case (supra)*, the Apex Court held that Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which the High Court exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

(10) In the matter of *STATE through Special Cell, New Delhi -vs- Navjot Sandhu alias Afshan Guru (supra)* it was again held by the Apex Court that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence must be exercised sparingly and only to keep subordinate courts and tribunals within

the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised in the "cloak of an appeal in disguise".

(11) In the other case i.e., *Surya Dev Rai (Supra)*, the Apex Court again held that the power of High Court under Articles 226 & 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it. The curtailment of revisional jurisdiction of the High Court under section 115 CPC by Amendment Act 46 of 1999 does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled.

(12) There is no doubt in the mind of this court regarding nature of supervisory jurisdiction conferred under Article 227 and that limitations on the rights of a party to get the wrong decision corrected by exercising such jurisdiction. This Court has full jurisdiction to correct a wrong if it is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to a party. However, in a matter like present one where the revisional jurisdiction of the High Court is taken away by Amendment Act 46 of 1999, the power of superintendence is to be exercised subject to the rule of self-discipline and the practice.

(13) The present is not a case in which the plaintiff has prayed for a temporary mandatory injunction in the trial Court. It is also not a case in which the plaintiff is saying that he was holding the possession of the suit premises as a tenant on the date of filing of

(127)

the suit and was dispossessed by the action of the defendant during the pendency of the suit and in the changed scenario, a temporary mandatory injunction has become necessary to meet the ends of justice. If we examine the plaint as well as the injunction application, it would appear that the plaintiff claims to be in possession of the suit premises since long back and the cause of action arose when the defendant tried to dispossess the plaintiff by various means and he is apprehending his dispossession. It is in this scenario, the courts below have passed the orders by holding that the plaintiff was not in possession of the suit premises on the date of institution of the suit; therefore, he was not entitled to a relief of temporary injunction. It is, for the first time, coming before the High Court that the High Court should exercise its superintending jurisdiction by passing an order of temporary mandatory injunction in the present facts and circumstances of this case. However, here also the plaintiff has not pleaded or even brought to the notice of the Court as to when he lost the possession or how he was dispossessed for claiming an order of temporary mandatory injunction. The phrase used by the Apex Court in *Dorab Cawasji Warden's case* (supra) like "last non-contested status" is always with reference to the status which immediately preceded the pending controversy and not beyond it. In the case on hand, Shri Agrawal canvasses, after referring to the plaint of the earlier case, that admittedly the plaintiff was tenant of the defendant in the year 2003 and if he has been evicted by force, his possession should be restored on the said admission between the parties regarding existence of tenancy in the year 2003 which continued later on. In the opinion of this Court, this cannot be held to be "last non contested status" as it was an old status and in fact, the plaintiff could not point out as to when such status was lost and he was forcibly evicted by the defendant. Rather his case before the Courts below was that he was still continuing with the possession of the premises and his possession should be protected. The prayer regarding interim mandatory injunction without placing on record, the factum about last non-contested status between the parties pertaining to its date etc., cannot be held to be *bona-fide*

and clean hand dealing by the plaintiff which is necessary for grant of such a relief claimed for the first time before the High Court.

(14) The trial Court as well as the first appellate Court has taken the view that the plaintiff could not establish that he was holding the possession of the premises on the date of institution of the suit and the injunction application was dismissed. The appellate Court has also held that when an order of status quo was already granted in favour of the plaintiff prior to the institution of the suit by the Sub-Divisional Magistrate, then, the said order itself was a sufficient weapon in the hands of the plaintiff to protect his possession and non-utilising that order and filing a suit for permanent injunction praying interim injunction therein, is itself sufficient to prima facie establish that, in fact, the plaintiff was not in possession of the suit premises prior to the date of institution of the suit and he was not entitled to a relief of temporary injunction. It is in this scenario, the plaintiff is claiming a mandatory temporary injunction before this Court, for the first time, without bringing on record the pleadings in relation to his dispossession with reference to the time and manner so as to apprise this Court about the necessity of passing such an order in his favour, which this Court can pass, on the principles laid down in *Dorab Cawasji Warden's case (supra)* treating the present as an exceptional case. In the opinion of this Court, the trial Court as well as the first appellate Court has rightly refused the temporary injunction and this case does not fall in the category of exceptional case so as to bring it within the exceptions noticed in the judgment of *Dorab Cawasji Warden's case (supra)*.

(15) The matter does not call for interference by this Court under Article 227 of the Constitution of India. The petition has no merits. The same is dismissed.

(16) No costs.

Sd/-
Sunil Kumar Sinha
Judge